

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 15, 2016

**SENATE BILL**

**No. 987**

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**Introduced by Senator McGuire**

February 10, 2016

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An act to add Part 17 (commencing with Section 37001) to Division 2 of the Revenue and Taxation Code, relating to medical-marijuana: marijuana, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 987, as amended, McGuire. ~~Taxation: medical~~ *Medical* marijuana: Marijuana-Value Tax *User Fee* Act.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, allows the use of marijuana for medical purposes. The Medical Marijuana Regulation and Safety Act, operative beginning on January 1, 2016, provides for the licensure and regulation of commercial medical marijuana activity, as specified. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This *bill would enact the Marijuana User Fee Act. The* bill, on and after January 1, 2018, unless a specified initiative is passed by the voters at the November 8, 2016, statewide general election, would impose ~~an~~ *an* ~~excise tax a fee~~ on the consumption or other use in this state of medical marijuana purchased from any retailer for the consumption or other use in this state at the rate of 15% of the sales price of the medical marijuana. This bill would provide that a purchaser is liable for that ~~tax fee~~ and would require every retailer engaged in business in this state and making sales of medical marijuana to a purchaser for the consumption or other

use in this state to separately state and collect the ~~tax fee~~ from a purchaser, as specified. This bill would also make specific violations of this bill a crime, thereby imposing a state-mandated local program.

This bill would require the State Board of Equalization to administer and collect the ~~tax fee~~ in accordance with the Fee Collection Procedures Law. By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program. The bill would require a retailer to register for a permit with the board, to prepare and file with the board returns, and to remit the ~~tax fee~~ quarterly. The bill would require that all revenues, less refunds, be remitted to the State Board of Equalization and deposited in the Marijuana ~~Value Tax~~ User Fee Fund, which the bill would establish.

This bill would require moneys in the Marijuana ~~Value Tax~~ User Fee Fund to be allocated by the Controller in specified percentages to the General Fund and, upon appropriation by the Legislature, to the Bureau of Medical Marijuana Regulation for the administration of a grant program to distribute grants to local agencies, ~~including districts, as defined,~~ that oversee or are affected by the regulation of cultivating, processing, manufacturing, distributing, and selling of medical marijuana, or that undertake enforcement activities pertaining to the cultivation of marijuana; the Department of Parks and Recreation for the stewardship, operation, maintenance, and preservation of state park units; and ~~to counties for allocation to city human services departments~~ *counties, as defined,* for drug and alcohol treatment programs. ~~By requiring counties to allocate funds to city human services departments, this bill would impose a state-mandated local program. The bill, commencing in 2018, and at least every other year thereafter, would require the Legislative Analyst to review and evaluate the fee, and provide a report on the fee to specified committees of the Legislature. The bill would also require funds to be advanced to the Marijuana User Fee Fund as a General Fund or special fund loan, would authorize the Director of Finance to provide an initial operating loan from the General Fund, and would appropriate to the board funds so advanced or loaned to the board for the implementation and administration of the act.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote:  $\frac{2}{3}$ . Appropriation: ~~no~~-yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that edible  
2 cannabis products, as defined in Section 19300.5 of the Business  
3 and Professions Code and as applicable to Section 2 of this act,  
4 are not considered a food product for purposes of Section 34 of  
5 Article XIII of the California Constitution.

6 SEC. 2. Part 17 (commencing with Section 37001) is added to  
7 Division 2 of the Revenue and Taxation Code, to read:

8

9 PART 17. MARIJUANA-VALUE-TAX USER FEE ACT

10

11 37001. This part is known, and may be cited, as the “Marijuana  
12 ~~Value Tax~~ User Fee Act.”

13 37002. For purposes of this part, the following definitions shall  
14 apply:

15 (a) “Local agency” includes any city, county, special district,  
16 authority, or other political subdivision of the state.

17 (a)

18 (b) “Medical marijuana” means medical cannabis as defined in  
19 Section 19300.5 of the Business and Professions Code.

- 1     ~~(b)~~  
2     (c) “Person” means person as defined in Section 55002.  
3     ~~(e)~~  
4     (d) “Primary caregiver” means a person who is exempt from  
5     the licensure requirements of the Medical Marijuana Regulation  
6     and Safety Act (Chapter 3.5 (commencing with Section 19300) of  
7     Division 8 of the Business and Professions Code) pursuant to  
8     subdivision (b) of Section 19319 of the Business and Professions  
9     Code.  
10    ~~(d)~~  
11    (e) “Purchaser” means a person that purchases medical  
12    marijuana for consumption or other use in this state.  
13    ~~(e)~~  
14    (f) “Qualified patient” means a person who is entitled to the  
15    protections of the Compassionate Use Act of 1996 (Section 11362.5  
16    of the Health and Safety Code).  
17    ~~(f)~~  
18    (g) “Retail sale” or “sale at retail” means a sale for any purpose  
19    other than resale in the regular course of business in the form of  
20    medical marijuana.  
21    ~~(g)~~  
22    (h) (1) “Retailer” includes every person that makes any retail  
23    sale or sales of medical marijuana. “Retailer” also includes a person  
24    holding a dispensary license issued pursuant to the Medical  
25    Marijuana Regulation and Safety Act (Chapter 3.5 (commencing  
26    with Section 19300) of Division 8 of the Business and Professions  
27    Code).  
28    (2) Every person making more than two retail sales of medical  
29    marijuana during any 12-month period shall be considered a retailer  
30    within the provisions of this part.  
31    ~~(h)~~  
32    (i) “Retailer engaged in business in this state” means any retailer  
33    that has substantial nexus with this state for purposes of the  
34    commerce clause of the United States Constitution and any retailer  
35    upon whom federal law permits this state to impose a ~~tax~~ *fee*  
36    collection duty.  
37    ~~(i)~~  
38    (j) (1) “Sale” or “purchase” means and includes any transfer  
39    of title or possession, exchange, or barter, conditional or otherwise,  
40    in any manner or by any means whatsoever, of medical marijuana

1 for a consideration. “Transfer of possession” includes only  
2 transactions found by the board to be in lieu of a transfer of title,  
3 exchange, or barter.

4 (2) Notwithstanding paragraph (1), “sale” or “purchase” does  
5 not include the transfer of title or possession, exchange, or barter  
6 of medical marijuana for a consideration between a qualified patient  
7 and his or her primary caregiver.

8 ~~(j)~~

9 (k) “Sales price” means the total amount for which medical  
10 marijuana is sold, valued in money, whether paid in money or  
11 otherwise, without any deduction on account of the cost of any  
12 expenses.

13 ~~(k)~~

14 (l) “Use” includes the exercise of any right or power over  
15 medical marijuana incident to the ownership of that medical  
16 marijuana, except that it does not include the sale of that medical  
17 marijuana in the regular course of business.

18 37003. On and after January 1, 2018, there is hereby imposed  
19 ~~an excise tax~~ a fee on the consumption or other use in this state of  
20 medical marijuana purchased from any retailer for the consumption  
21 or other use in this state at the rate of 15 percent of the sales price  
22 of the medical marijuana.

23 37004. (a) Every purchaser consuming or otherwise using in  
24 this state medical marijuana that the purchaser purchased from a  
25 retailer for consumption or other use in this state is liable for the  
26 ~~tax fee~~ imposed by Section 37003. That purchaser’s liability is not  
27 extinguished until the ~~tax fee~~ has been paid to this state except that  
28 a receipt from a retailer engaged in business in this state given to  
29 a purchaser pursuant to paragraph (2) of subdivision (b) is sufficient  
30 to relieve the purchaser from further liability for the ~~tax fee~~ to  
31 which the receipt refers.

32 (b) (1) Every retailer engaged in business in this state and  
33 making sales of medical marijuana to a purchaser shall, at the time  
34 of making such a sale, collect the ~~tax fee~~ as a charge separate from,  
35 and not included in, any other fee, charge, or other amount paid  
36 by the purchaser.

37 (2) Every retailer engaged in business in this state shall collect  
38 the ~~tax fee~~ from the purchaser and give to the purchaser a receipt  
39 therefor in the manner and form prescribed by the board.

(c) The board shall administer and collect the ~~tax fee~~ imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)), except that Article 1.1 (commencing with Section 55050) of Chapter 3 of that part shall not apply. ~~For purposes of this part, the references in the Fee Collection Procedures Law to “fee” shall include the tax imposed by this part, and references to “feepayer” shall include a person required to pay the tax imposed by this part.~~

(d) (1) ~~The tax fee~~ required to be collected by the retailer engaged in business in this state, any ~~tax fee~~ collected from a purchaser that has not been remitted to the board, and any amount unreturned to a purchaser which is not ~~tax the fee~~, but was collected from the purchaser under the representation by the retailer that it was ~~tax the fee~~, constitutes debts owed by the retailer to this state.

(2) A retailer is relieved from liability to collect ~~tax the fee~~ that became due and payable, insofar as the measure of the ~~tax fee~~ is represented by accounts that have been found to be worthless and charged off by the retailer in accordance with generally accepted accounting principles. A retailer that has previously paid the amount of the ~~tax fee~~ may, under rules and regulations prescribed by the board, take as a deduction on its return the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the amount of the ~~tax fee~~ shall be paid with the return.

(3) The board may by regulation promulgate such other rules with respect to uncollected or worthless accounts as it shall deem necessary to the fair and efficient administration of this part.

(e) It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the ~~tax fee~~ or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the medical marijuana sold or that if added it or any part thereof will be refunded. Any person violating this subdivision is guilty of a misdemeanor.

(f) (1) ~~The tax fee~~ required to be collected by the retailer engaged in business in this state from the purchaser shall be displayed separately from the ~~list price, the price advertised in the premises, the marked price, or other price of the medical marijuana~~

1 on the sales check or other proof of sales. Any person violating  
2 this ~~subdivision~~ paragraph is guilty of a misdemeanor.

3 (2) *Except as otherwise required by paragraph (1), the fee*  
4 *required to be collected by the retailer engaged in business in this*  
5 *state from the purchaser shall be included in any list price, marked*  
6 *price, or any other advertised or quoted price of medical marijuana*  
7 *provided or displayed by the retailer engaged in business in this*  
8 *state.*

9 (g) (1) The board may prescribe, adopt, and enforce regulations  
10 relating to the administration and enforcement of this part.

11 (2) The board may prescribe, adopt, and enforce any emergency  
12 regulations as necessary to implement this part. Any emergency  
13 regulation prescribed, adopted, or enforced pursuant to this section  
14 shall be adopted in accordance with Chapter 3.5 (commencing  
15 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
16 Government Code, and, for purposes of that chapter, including  
17 Section 11349.6 of the Government Code, the adoption of the  
18 regulation is an emergency and shall be considered by the Office  
19 of Administrative Law as necessary for the immediate preservation  
20 of the public peace, health and safety, and general welfare.

21 (h) (1) The ~~tax~~ fee imposed by this part is due and payable to  
22 the board quarterly on or before the last day of the month next  
23 succeeding each quarterly period.

24 (2) On or before the last day of the month following each  
25 quarterly period, a return for the preceding quarterly period shall  
26 be filed using electronic media with the board. Returns shall be  
27 authenticated in a form or pursuant to methods as may be  
28 prescribed by the board.

29 37005. (a) A retailer required to collect the ~~tax~~ fee imposed  
30 under this part shall register for a permit with the board. Every  
31 application for registration shall be made in a form prescribed by  
32 the board and shall set forth the name under which the applicant  
33 transacts or intends to transact business, the location of the  
34 retailer's place or places of business, and any other information  
35 that the board may require. An application for registration shall  
36 be authenticated in a form or pursuant to methods as may be  
37 prescribed by the board.

38 (b) The board shall grant and issue to each applicant that  
39 complies with subdivision (a) a separate permit for each place of  
40 business within the state.

1 (c) A permit issued pursuant to this section is not assignable  
2 and is valid only for the person in whose name it is issued and for  
3 the transaction of business at the place designated therein. It shall  
4 at all times be conspicuously displayed at the place for which it is  
5 issued.

6 37005.3. Whenever any retailer fails to comply with any  
7 provision of this part or any rules or regulations of the board  
8 prescribed and adopted under this part, the board upon hearing,  
9 after giving the retailer at least 10 days' notice in writing specifying  
10 the time and place of the hearing and requiring the retailer to show  
11 cause why the permit should not be revoked, may revoke or  
12 suspend the permit held by the retailer. The board shall give to the  
13 retailer written notice of the suspension or revocation of any of  
14 the retailer's permits. The notices herein required may be served  
15 personally or by mail in the manner prescribed for service of notice  
16 of a deficiency determination. The board shall not issue a new  
17 permit after the revocation of a permit unless it is satisfied that the  
18 former holder of the permit will comply with the provisions of this  
19 part and the regulations of the board prescribed and adopted under  
20 this part.

21 37005.5. (a) The board may refuse to issue a permit to any  
22 person submitting an application for a permit as required in Section  
23 37005 if the person desiring to engage in or conduct business as  
24 a retailer within this state has an outstanding final liability with  
25 the board for any amount due under this part.

26 (b) The board may also refuse to issue a permit if the person  
27 desiring to engage in or conduct business as a retailer within this  
28 state is not a natural person or individual and any person controlling  
29 the person desiring to engage in or conduct business as a seller  
30 within this state has an outstanding final liability with the board  
31 as provided in subdivision (a). For the purposes of this section,  
32 "controlling" has the same meaning as defined in Section 22971  
33 of the Business and Professions Code.

34 (c) For purposes of this section, a liability will not be deemed  
35 to be outstanding if the person has entered into an installment  
36 payment agreement pursuant to Section 55209 for any liability  
37 and is in full compliance with the terms of the installment payment  
38 agreement.

39 (d) If the person submitting an application for a permit pursuant  
40 to Section 37005 has entered into an installment payment

1 agreement as provided in subdivision (c) and fails to comply with  
2 the terms of the installment payment agreement, the board may  
3 seek revocation of the person's permit pursuant to this section.

4 (e) (1) Whenever any person desiring to engage in or conduct  
5 business as a retailer within this state is denied a permit pursuant  
6 to this section, the board shall give to the person written notice of  
7 the denial. The notice of the denial may be served personally, by  
8 mail, or by other means deemed appropriate by the board. If served  
9 by mail, the notice shall be placed in a sealed envelope, with  
10 postage paid, addressed to the person at the address as it appears  
11 in the records of the board. The giving of notice shall be deemed  
12 complete at the time of deposit of the notice at the United States  
13 Postal Service, or a mailbox, subpost office, substation or mail  
14 chute, or other facility regularly maintained or provided by the  
15 United States Postal Service, without extension of time for any  
16 reason. In lieu of mailing, a notice may be served personally by  
17 delivering to the person to be served and service shall be deemed  
18 complete at the time of the delivery. Delivery of notice by other  
19 means deemed appropriate by the board may include, but is not  
20 limited to, electronic transmission. Personal service or delivery by  
21 other means deemed appropriate by the board to a corporation may  
22 be made by delivery of a notice to any person listed on the  
23 application as an officer.

24 (2) Any person that is denied a permit pursuant to this section  
25 may request reconsideration of the board's denial of the permit.  
26 This request shall be submitted in writing within 30 days of the  
27 date of the notice of denial. Timely submission of a written request  
28 for reconsideration shall afford the person a hearing in a manner  
29 that is consistent with a hearing provided for by Section 37005.3.  
30 If a request for reconsideration is not filed within the 30-day period,  
31 the denial becomes final at the end of the 30-day period.

32 (f) The board shall consider offers in compromise when  
33 determining whether to issue a permit.

34 37006. (a) The Marijuana-~~Value Tax~~ *User Fee* Fund is hereby  
35 established in the State Treasury. All revenues, less refunds,  
36 collected pursuant to this part shall be made in remittances to the  
37 board and shall be deposited in the Marijuana-~~Value Tax~~ *User Fee*  
38 Fund.

(b) ~~Moneys~~ Except as otherwise provided in Section 37006.3, moneys in the Marijuana-Value Tax User Fee Fund shall be allocated by the Controller annually as follows:

(1) Thirty percent to the General Fund.

(2) Thirty percent to the Bureau of Medical Marijuana Regulation for the administration of a grant program to distribute grants to local agencies, ~~including districts, agencies~~ that oversee or are affected by the regulation of cultivating, processing, manufacturing, distributing, and selling of medical marijuana, ~~or that undertake enforcement activities pertaining to the cultivation of marijuana in violation of state law or local ordinance, or that are involved in a fire suppression, emergency medical, or other "all-risk" response to a marijuana cultivation, processing, manufacturing, or distribution incident,~~ upon appropriation by the Legislature. ~~All local agencies, including districts, shall be eligible for the grants, including, but not limited to, law enforcement and zoning enforcement.~~ The grants shall be made available beginning on or before July 1, 2018. No more than 5 percent of any funds allocated may be used for administrative costs of the grant program by the bureau or for any administrative costs of the local agency awarded the grant.

(3) Twenty percent to the Department of Parks and Recreation for the stewardship, operation, maintenance, and preservation of state park units, including units operated on behalf of the state by local or regional agencies or by nonprofit organizations, upon appropriation by the Legislature. The department shall allocate to those local or regional agencies or nonprofit organizations a percentage of the funds received pursuant to this paragraph that is roughly proportional to the ratio of the number of units operated by the agencies or organizations to the number of units operated by the department.

(4) (A) Twenty percent to counties for drug and alcohol treatment programs, distributed based on the ratio of each county's population to the total population of all counties, as set forth in the most recent E-1 Cities, Counties, and the State Population Estimates published by the Department of Finance, upon appropriation by the Legislature. ~~Each county shall allocate funds received pursuant to this subdivision to the human services departments of cities within the county.~~ Any funds appropriated

1 shall be used for drug and alcohol treatment and recovery and case  
2 management services.

3 *(B) For purposes of this paragraph, “county” means a county*  
4 *mental health department, two or more county mental health*  
5 *departments acting jointly, or a city-operated program receiving*  
6 *funds pursuant to Section 5701.5 of the Welfare and Institutions*  
7 *Code.*

8 37006.3. *(a) Funds for the implementation and administration*  
9 *of this part shall be advanced to the Marijuana User Fee Fund as*  
10 *a General Fund or special fund loan, and shall be repaid by the*  
11 *initial revenues, less refunds, collected pursuant to this part.*

12 *(b) Funds advanced or loaned to the Marijuana User Fee Fund*  
13 *pursuant to this section are hereby appropriated to the board for*  
14 *the implementation and administration of this part.*

15 *(c) The Director of Finance may provide an initial operating*  
16 *loan from the General Fund to the Marijuana User Fee Fund that*  
17 *does not exceed five million dollars (\$5,000,000).*

18 37006.5. Commencing 2018, and at least every other year  
19 thereafter, the Legislative Analyst shall review and evaluate the  
20 ~~tax~~ fee imposed by this part, and shall provide to the Senate  
21 Committees on Governance and Finance, Appropriations, and  
22 Budget and Fiscal Review, and to the Assembly Committees on  
23 Revenue and Taxation, Appropriations, and Budget, a report that  
24 makes recommendations regarding the ~~tax~~ rate of, allocations of  
25 revenue from, and any other adjustments to, the ~~tax~~ fee imposed  
26 by this part. The report shall include, but not be limited to, all of  
27 the following:

- 28 (a) Annual revenues.  
29 (b) Annual costs of implementing this part.  
30 (c) Annual amounts allocated to all of the following:  
31 (1) The General Fund.  
32 (2) The Bureau of Medical Marijuana Regulation.  
33 (3) The Department of Parks and Recreation.  
34 (4) Counties, for drug and alcohol programs.  
35 (d) ~~Tax~~-Fee compliance rates.  
36 (e) Board recommendations to improve effective and efficient  
37 administration and enforcement of this part.

38 37007. Nothing in this part shall be interpreted to preclude a  
39 city, county, or city and county from enacting or continuing to  
40 enforce a local ordinance that imposes any ~~taxes~~ fees, taxes, or

1 other charges on the consumption or other use of medical  
2 marijuana, as may be otherwise authorized by law.

3 37008. This part shall only become operative if Secretary of  
4 State Initiative Number 1762, also known as the Control, Regulate  
5 and Tax Adult Use of Marijuana Act, is not approved by the voters  
6 at the November 8, 2016, statewide general election and does not  
7 take effect.

8 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
9 ~~Section 6 of Article XIII B of the California Constitution for certain~~  
10 ~~costs that may be incurred by a local agency or school district~~  
11 ~~because, in that regard, this act creates a new crime or infraction,~~  
12 ~~eliminates a crime or infraction, or changes the penalty for a crime~~  
13 ~~or infraction, within the meaning of Section 17556 of the~~  
14 ~~Government Code, or changes the definition of a crime within the~~  
15 ~~meaning of Section 6 of Article XIII B of the California~~  
16 ~~Constitution.~~

17 However, if the Commission on State Mandates determines that  
18 this act contains other costs mandated by the state, reimbursement  
19 to local agencies and school districts for those costs shall be made  
20 pursuant to Part 7 (commencing with Section 17500) of Division  
21 4 of Title 2 of the Government Code.

22 *SEC. 3. No reimbursement is required by this act pursuant to*  
23 *Section 6 of Article XIII B of the California Constitution because*  
24 *the only costs that may be incurred by a local agency or school*  
25 *district will be incurred because this act creates a new crime or*  
26 *infraction, eliminates a crime or infraction, or changes the penalty*  
27 *for a crime or infraction, within the meaning of Section 17556 of*  
28 *the Government Code, or changes the definition of a crime within*  
29 *the meaning of Section 6 of Article XIII B of the California*  
30 *Constitution.*